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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
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10 U.S. BANK N.A. as Successor Trustee
11 for Bank of America as Trustee for
12 Thornburg Mortgage Securities Trust
2007-3,

13 Plaintiff,
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15 vs.
16
17 JANET FULADIAN and ERIC
18 ROTELLI, as Trustee of Windsor
Property Trust, a California trust,
19
20 Defendants.

Case No.: CV 12-10493-DSF (Ex)

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22 **FINDINGS OF FACT AND**
23 **CONCLUSIONS OF LAW**

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25 The parties stipulated to a trial before the Court based on briefing and
26 stipulated factual findings. The trial occurred on February 9, 2016. The Court now
27 adopts the stipulated facts and makes legal conclusions.
28

29 **FINDINGS OF FACT AS STIPULATED BY THE PARTIES**

30 1. On or about December 6, 2006, Defendant Janet Fuladian executed a
31 Payment Option/Adjustable Rate Note (“Note”) to obtain a refinance loan in the
32 amount of One Million Five Hundred Forty Thousand Dollars (\$1,540,000)
33

1 ("Subject Loan") from the lender, Metrocities Mortgage, LLC, predecessor to
2 Plaintiff.

3 2. The Subject Loan proceeds were disbursed as follows: (i)
4 approximately Nine Hundred Seventy-Seven Thousand Seventy-Four Dollars and
5 Fifty Five Cents (\$977,074.55) was paid to NCB, FSB to pay off the pre-existing
6 first loan; (ii) approximately Five Hundred Thirty-Six Thousand Six Hundred Fifty-
7 Seven Dollars and Ten Cents (\$536,657.10) was cash paid directly to Defendant.

8 3. The Subject Loan was subject to and secured by Defendant's leasehold
9 interest in the real property located at 201 Ocean Avenue, Apartment 1509-P, Santa
10 Monica, California 90402 (the "Property"), as evidenced by the Short Form Deed of
11 Trust and Assignment of Rents recorded against the Property, the Loan Security
12 Agreement, and the Recognition Agreement.

13 4. The Note was subsequently negotiated, by way of endorsement in
14 blank, to Plaintiff U.S. Bank N.A. as the Successor Trustee of the Thornburg
15 Mortgage Securities Trust 2007-3, which is the current holder of the Note.

16 5. Cenlar, FSB is the current loan servicer on behalf of Plaintiff.

17 6. Defendant defaulted on her obligation to submit payments under the
18 Subject Loan in 2010, and the Subject Loan is due and owing for the April 2010
19 payment.

20 7. As a result of Defendant's default on her payments under the Note, on
21 or about August 10, 2010, a Notice of Default and Election to Sell Under Deed of
22 Trust was recorded against the Property by the trustee, on behalf of U.S. Bank.

23 8. Defendant also defaulted on her lease payments under the proprietary
24 lease agreement entered into by Defendant and her landlord, lessor Ocean Towers
25 Housing Corporation ("OTHC").

26 9. OTHC gave notice of Defendant's default under the lease agreement to
27 Defendant, the lender and to other known parties of interest on May 11, 2011.
28

1 Neither Defendant nor U.S. Bank, or any of its agents, cured the default under the
2 lease.

3 10. As a result of the uncured lease default, on or about August 2, 2011, an
4 Unlawful Detainer Judgment (“UD Judgment”) was entered against Defendant and
5 in favor of OTHC, terminating Plaintiff’s security interest in the Subject Property.

6 11. OTHC recorded a Notice of Entry of Judgment Terminating
7 Proprietary Lease against the Property on or about August 11, 2011.

8 12. Neither U.S. Bank, nor any of its agents, ever foreclosed on the
9 underlying security interest prior to the UD Judgment being entered on August 2,
10 2011.

11
12 **CONCLUSIONS OF LAW**

13 The sole issue before the Court is the operation of the California one-action
14 rule and its associated “security first” principle.

15 There can be but one form of action for the recovery of any debt or the
16 enforcement of any right secured by mortgage upon real property or an
17 estate for years therein, which action shall be in accordance with the
18 provisions of this chapter.

19 Cal. Civ. Proc. Code § 726(a).

20 Under section 726, “a creditor secured by a trust deed on real property must
21 rely on the security before enforcing the underlying debt.” Bank of Am. v. Graves,
22 51 Cal. App. 4th 607, 611 (1996). “However, when the value of the security has
23 been lost through no fault of the creditor, the creditor may bring a personal action on
24 the debt.” Id. “[W]hen the mortgagee, by his own act or neglect, deprives himself
25 of the right to foreclose the mortgage, he at the same time deprives himself of the
26 right to an action upon the note.” Ghirardo v. Antonioli, 14 Cal. 4th 39, 48 (1996)
27 (alteration in original).

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1 California courts have ruled that a “sold out” junior lienholder can sue a
2 debtor for the balance of a debt after the senior lienholder has foreclosed on the
3 property. See Roseleaf Corp. v. Chierighino, 59 Cal.2d 35, 38-40 (1963); Graves, 51
4 Cal. App. 4th at 611-12. The one-action rule does not require such junior lienholders
5 to pursue foreclosure or to cure the default to the senior lienholder in order to obtain
6 a money judgment against the debtor. Id. “There is no reason to compel a junior
7 lienor to go through foreclosure and sale when there is nothing left to sell.”
8 Roseleaf, 59 Cal.2d at 39.

9 Plaintiff analogizes its position to that of a sold out junior lienholder. In
10 Plaintiff’s view, OTHC, the landlord, was equivalent to a senior lienholder with
11 respect to the lease in question. When OTHC obtained an unlawful detainer
12 judgment, evicted Defendant, and extinguished the lease, it obtained an analogous
13 result to a foreclosure. And, by its nature, the unlawful detainer judgment left no
14 residual value from the lease for the junior lienholder. The Court agrees with this
15 assessment. If a junior lienholder has no obligation to cure a default on a senior lien
16 when it is in danger of being sold out, it is unlikely that California courts would find
17 that the one-action rule requires that a lienholder on a lease cure a default on rent
18 payments in the face of an unlawful detainer action against the debtor/lessee. And
19 the stated rationale for exempting junior lienholders from the one-action rule applies
20 here as well:

21 The junior lienor, however, is in no better position to protect himself
22 than is the debtor. Either would have to invest additional funds to
23 redeem or buy in at the sale. Equitable considerations favor placing this
24 burden on the debtor, not only because it is his default that provokes the
25 senior sale, but also because he has the benefit of his bargain with the
26 junior lienor who, unlike the selling senior, might otherwise end up
27 with nothing.

28 Roseleaf, 59 Cal.2d at 41.

1 Plaintiff's failure to cure the lease default resulted in an unlawful detainer
2 judgment and the loss of its security. But for the reasons given in Roseleaf and
3 Graves in the sold out junior lienholder context, this does not mean that Plaintiff has
4 no recourse against the Defendant for an unsecured debt. Judgment will be entered
5 in favor of Plaintiff. Plaintiff is to submit a proposed judgment after conferring
6 with Defendant.

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8 /// 3/14/16

9 Dated: _____



Dale S. Fischer
United States District Judge

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